

need only refer to a passage of the judgment of Lord Guest when dealing with the matter, where he states:

"Before the Court of Appeal in Singapore was entitled to reject the trial judge's estimate of the credibility of the appellant and Goh Leh they would have to be satisfied that the trial judge's view was plainly wrong and that any advantage which he enjoyed by having seen and heard the witnesses was not sufficient to explain his conclusion."

This case seems to me to be completely dependant on the trial judge's estimate of the credibility of the appellant and his witnesses and nothing that counsel for the appellant has put forward in his arguments before me has persuaded me that the trial judge's view of the credibility of the witnesses before him was in any way plainly wrong.

In those circumstances I hold the view that this appeal ought to be dismissed.

Barakbah C.J. (Malaya) and Wylie C.J. (Borneo) concurred.

Appeal dismissed.

Solicitors: Harbans Singh & Kamil; K. K. Bezboruah.

CENTRAL ELECTRICITY BOARD v. GOVINDAMAL

[A.C.J. (Ong J.) May 6, 1965]

[K.L. — Civil Appeal No. 4 of 1965]

Practice and Procedure — Attachment of pension — Pension not liable to be attached — Enforcement of maintenance order — Electricity Ordinance, 1949, s. 22.

The respondent obtained an order for maintenance against her husband who was employed by the appellant. Subsequently the court at the instance of the respondent made a further order directing the manager of the appellant board, to deduct the amount of the maintenance from the salary of the husband and pay it to the respondent's solicitors. This was done until 1963 when the husband retired to India on pension and opted to draw his pension there. As the husband ceased to be eligible for salary on retirement the appellant ceased to make any further payment to the respondent's solicitors. Thereupon the respondent obtained an order for a warrant of distress and sale to be issued against the gratuity and pension which may be found in the hands of the manager of the appellant board. The manager filed an objection, which the learned magistrate dismissed after hearing the parties. On appeal,

Held: the pension was not liable to attachment under section 22 of the Electricity Ordinance, 1949 and the order of the magistrate must therefore be set aside.

CIVIL APPEAL.

Ronald Khoo for the appellant.

K. L. Devaser for the respondent.

Ong J.: This is an appeal by the Central Electricity Board, as objector, against the decision of the magistrate at Kuala Lumpur, dismissing an application by the objector, that

A a warrant of distress and sale, issued by the said magistrate be set aside on the ground that a pension is not liable to be attached sequestered or levied upon for or in respect of any debt.

B I am surprised that any attempt at all should have been made to attach a pension, more surprised that it was allowed by way of a warrant of distress and sale, but most of all I am surprised that the objection by the Central Electricity Board should have been dismissed, without any grounds other than that the magistrate "agreed with the arguments of counsel for the applicant."

C In Maintenance Application No. 25 of 1949, Kandasamy, the respondent, had been ordered to pay his wife, Govindamal, the sum of \$50 per month for the maintenance of their two children. On November 16, 1962, at the instance of Govindamal, the court made an order directing the manager of the Central Electricity Board, Kuala Lumpur, to deduct such sum from the salary of Kandasamy and pay the same to the wife's solicitors, Messrs. Devaser & Co. These payments were made regularly until November 30, 1963. On December 1, 1963 Kandasamy retired on pension, returned to India and opted to draw his pension there. Accordingly arrangements were made between the Attorney-General, Malaya and his counterpart in Madras for remission of Kandasamy's pension through the Chartered Bank Trustees, Malaya Ltd. As Kandasamy ceased to be eligible for salary from December 1, 1963, when he retired on pension, the Central Electricity Board ceased making further payment to Messrs. Devaser & Co.

Thereupon Govindamal made an application to the magistrate for a variation of the order dated November 16, 1962, by substituting the manager of the Chartered Bank Trustees, Malaya Ltd., in place of the manager of the Central Electricity Board, as the person liable to make the monthly payment of \$50, with effect from December 1, 1963.

When this application came up, however, Govindamal's solicitors apparently did not ask for an order in terms. Instead they succeeded in obtaining an order for the issue of a "warrant of distress and sale" authorising the bailiff "to make distress by seizure of property, namely, the gratuity and pension belonging to the said Kandasamy which may be found in the hands of the manager of the Central Electricity Board, Kuala Lumpur, and if within 14 days next after such distress the said sum of \$200 being the maintenance due for the said four months (December 1963 to March 1964) shall not be paid to sell the property distrained or so much thereof as shall be sufficient to satisfy the said maintenance etc."

Presumably the bailiff carried out his duties

by serving a garnishment notice on the manager of the Central Electricity Board. The record in this appeal does not show how otherwise he was able to carry out the order for execution. At any rate, the attempt to attach a pension led to the manager of the Central Electricity Board filing an objection, which the learned magistrate dismissed, after hearing the parties.

The objector relied on section 22 of the Electricity Ordinance, 1949, of which the relevant portions read as follows:

22. (1) Subject to the approval of the Yang di-Pertuan Agong, the board shall establish a scheme or schemes for the payment of super-annuation allowances, pensions or gratuities to officers and servants of the board who retire from the service of the board, or otherwise cease to hold office, by reason of age, or of infirmity of body or mind, or of abolition of office.

(2) The following provisions shall apply to any scheme established under this section —

xx xx xx xx

(b) no donation or contribution to a fund established under any such scheme or interest thereon shall be assignable or transferable or liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatsoever other than a debt due to the board or to the Federal Government or a State or Settlement Government.

Mr. Devaser's argument *per contra*, was that a pension was property, and the Central Electricity Board could not raise any objection since they have no interest in such property. He argued further that, once a maintenance order has been made "subsequent default should be treated as a criminal matter, and in such case the Central Electricity Board could not object: even in a civil case they had no standing." He also referred to section 3(1)(c) of the Debtors Ordinance, 1957, section 4 of the Married Women and Children (Maintenance) Ordinance, 1950 and section 283 of the Criminal Procedure Code.

I do not follow Mr. Devaser's arguments at all. Kandasamy's pension is not liable to attachment under section 22 of the Electricity Ordinance, 1949. Whether the proceedings that follow default by the husband in compliance with a maintenance order are criminal or not, is immaterial and beside the point when an application for execution is made, not against the husband, but a third party who pays his pension.

The appeal is allowed and the order of the magistrate is set aside, with costs here and in the court below.

Appeal allowed.

Solicitors: *Shearn, Delamore & Co.; Devaser & Co.*

A LIM EOW THOON v. LIM KENG CHUAN & ORS.

[O.C.J. (Hepworth J.) May 7, 1965]

[Penang — Civil Suit No. 48 of 1963]

Trusts and trustees — Express trust — Burial grounds — Compulsory acquisition by Government of part of property subject to trust — Award — Involuntary substitution of money for land — Interests of persons entitled to benefit of property should survive acquisition.

By an indenture dated September 17, 1930 between T.S.S. of the first part, the plaintiff of the second part and L.E.H. and the first and second defendants (hereinafter called the trustees) of the third part, T.S.S. by the direction of the plaintiff conveyed and the plaintiff conveyed and confirmed unto the trustees certain lands in Penang on the trusts and conditions to be made by a separate deed of declaration of trust therein to be declared concerning the same. By the same indenture the trustees jointly and severally covenanted with the plaintiff, his executors and administrators that they would maintain and keep the said lands as a family burial ground. No separate deed of declaration of trust was ever made. L.E.H. died and the third defendant was appointed trustee in his place. A portion of the said lands was acquired by the Government of the State of Penang in 1962 and in subsequent proceedings the money awarded was paid into court.

The plaintiff claimed that as no separate deed of declaration of trust was made as envisaged in the said indenture of 1930 there had been a failure of the trust and that there was accordingly a resulting trust of the said lands in his favour and that the money in court should be paid out to him. The plaintiff also submitted that even if the said indenture was complete in itself there was nonetheless a resulting trust in respect of the money in court representing the award for certain portions because acquisition by the State Government made it no longer possible for the portions to be used as a burial ground and accordingly the trust in so far as the portions were concerned failed.

Held: (1) as there was no uncertainty as to the trust property and as there was no uncertainty as to the beneficiaries or as to the way in which the property was to be applied all the prerequisites for the creation of an express trust were present and the said indenture was a deed creating a trust which was complete in itself and required no separate deed of declaration of trust;

(2) applying the principle in *In re Scholfield's Will's Trusts*,⁽⁵⁾ the compulsory acquisition of part of the trust property under the Land Acquisition Act, 1960, was the involuntary substitution of a sum of money for some pieces of land and would not appear to be any ground for effecting any substitution of the persons entitled to the benefit of the property. Fairness of administration would appear to require that as far as possible the interest of the trustees and therefore the interests of the persons entitled to the benefit of the property should survive the acquisition of that property.

Cases referred to:—

(1) *King v. Denison*, 35 E.R. 106.

(2) *Re Cooper's Trusts* [1956] 3 All E.R. 28.

(3) *Re West* [1900] 1 Ch. 84.

(4) *Cheang Tew Muew & Ors. v. Cheang Cheow Lean Neo & Ors.* [1930] S.S.L.R. 58.

(5) *In re Scholfield's Will's Trusts* [1949] 1 Ch. 345.

CIVIL SUIT.

C.H. Smith and Ong Huck Lim for the plaintiff.